

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARC ANTWAIN X. RIVERS, SR.,  
MUHAMMAD,

Plaintiff,

v.

COREY DUMONT AND M. RENNICK,

Defendants.

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3:17-CV-2415  
(JUDGE MARIANI)

ORDER

AND NOW, THIS 25<sup>th</sup> DAY OF MARCH, 2019, upon *de novo* review of

Magistrate Judge Mehalchick's Report and Recommendation ("R&R") (Doc. 26), and for the reasons stated in the accompanying Memorandum Opinion, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff Objections (Doc. 28-1) are **OVERRULED**.<sup>1</sup> Plaintiff's sole conclusory argument that he has "clearly articulated under liberal construance [sic]" that he has stated a claim for relief in his complaint offers no rebuttal to the analysis set forth in the R&R.
2. The R&R (Doc. 26) is **ADOPTED IN PART AND REJECTED IN PART** as follows:
  - a. The Court **ADOPTS** the R&R's recommendation that Plaintiff be allowed to file an amended complaint in connection with Plaintiff's First Amendment free

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<sup>1</sup> Plaintiff's Objections were not formally docketed on the record but were included as an attachment to Defendants' Appendix of Exhibits in Support of their Brief in Opposition to Plaintiff's Objections to the R&R.

exercise and freedom of speech claims (solely for the reasoning set forth in the Court's Memorandum Opinion) and Plaintiff's Fourth/Fourteenth Amendment unlawful arrest and malicious prosecution claims. The Court also **ADOPTS** the R&R's recommendation to dismiss Plaintiff's Pennsylvania state constitutional claims for damages.

- b. The Court **DOES NOT ADOPT** the R&R's recommendation that Plaintiff's claims against Defendants in their official capacities be dismissed with prejudice.
- c. The Court **ADOPTS IN PART AND REJECTS IN PART** the R&R's recommendation with respect to the availability of punitive damages because the *pro se* Plaintiff is hereby given leave to amend his complaint to permit him to properly state a claim for punitive damages by amending his complaint to bring claims against Defendants in their individual capacities.

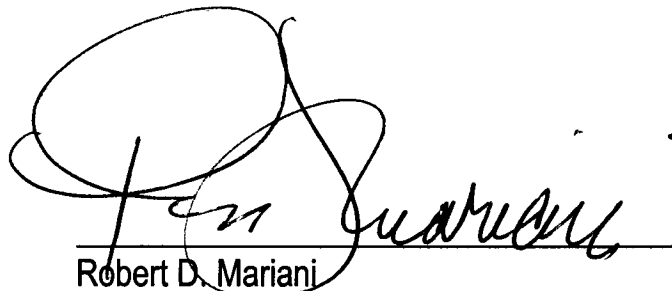
3. Defendants' motion to dismiss for failure to state a claim (Doc. 14) is **GRANTED** as follows:

- a. Plaintiff's First Amendment free exercise, First Amendment freedom of speech, Fourth/Fourteenth Amendment unlawful arrest/malicious prosecution, and Pennsylvania state constitutional claims are **DISMISSED WITHOUT PREJUDICE**.

b. Plaintiff's claim seeking criminal prosecution of Defendants under 18 U.S.C.

§§ 241-42 is **DISMISSED WITH PREJUDICE**.

4. Plaintiff is granted leave to amend his Complaint within **twenty-eight (28) days from the date of this Order** to set forth proper First Amendment free exercise claims, First Amendment freedom of speech claims, Fourth/Fourteenth Amendment unlawful arrest/malicious prosecution claims, Pennsylvania state constitutional claims for equitable relief, any claim for *Monell* liability against the City of Wilkes-Barre, and claims for damages against defendant officers Dumont and Rennick in their individual capacities. Failure to amend the Complaint may result in dismissal of this action with prejudice.
5. The case is **REMANDED** to Magistrate Judge Mehalchick for further proceedings consistent with this Order.



Robert D. Mariani  
United States District Judge